

§ 789.3 “* * * goods were produced in compliance with” * * * the requirements referred to.

It is apparent from the language of the statute and the statement appended to the Conference Report⁵ that the written assurance referred to is one with respect to specific goods in being, assuring the purchaser that the “goods in question were produced in compliance” with the requirements referred to in sections 12(a) and 15(a) (1). A written statement made prior to production of the particular goods is not the type of assurance contemplated by the statute.

A so-called “general and continuing” assurance or “blanket guarantee” stating, for instance, that all goods to be shipped to the purchaser during a twelve-month period following a certain date “will be or were produced” in compliance with applicable provisions of the Act would not afford the purchaser the statutory protection with respect to any production of such goods after the assurance is given. This type of assurance attempts to assure the purchaser concerning the future production of goods. With respect to any production of goods after the assurance is given, this “general and continuing” assurance would, at most, be an assurance that the goods will be produced in compliance with the Act.

The definitions of the terms “goods” and “produced” in sections 3(i) and 3(j) of the Act⁶ respectively, should be con-

sidered in interpreting the requirement that the written assurance must relate to goods which were produced in compliance with applicable provisions of the Act. These definitions make it apparent, for instance that the raw materials from which a machine has been made retain their identity as “goods” even though these raw materials have been converted into an entirely different finished product in which the raw materials are merely a part.

Since “goods,” as defined in the Act, “does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturing, or processor thereof,” the “hot goods” restrictions of section 12(a) and section 15(a)(1) do not apply to such ultimate consumers. There appears to be no need, therefore, for such consumers to secure these written assurances from their suppliers.

§ 789.4 Scope and content of assurances of compliance.

A question frequently asked is whether a single written assurance of compliance will suffice for purposes both of section 12(a), relating to child labor, and section 15(a)(1), relating to wage and hour standards. A single assurance would appear to be sufficient, provided it is specific enough to meet all the conditions of the two sections. Although it is possible that the courts might find assurances referring generally to compliance “with the requirements of the Act” adequate for all purposes, the safer course to pursue would be to phrase the assurance in terms of compliance with the specific sections of the Act whose violation would bar the goods from interstate or foreign commerce.

The language of the statute gives support to this view. It will be noted that the written assurance referred to in section 15(a)(1) is described as one of “compliance with the requirements of the Act * * *,” whereas the written assurance referred to in section 12(a) is described as one of “compliance with this section.” In view of the differences in wording of the two sections, a court

rectly essential to the production thereof, in any State.”

⁵H. Rept. No. 1453, 81st Cong., 1st sess., p. 31.

⁶Section 3(i) defines “goods” to mean “goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.”

Section 3(j) defines “produced” to mean “produced, manufactured, mined, handled, or in any other manner worked on in any state; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation di-